

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDWARD W. FISHER, JR.,

2:11-CV-226 JCM (LRL)

Plaintiff,

V.

STEWART CENTER, et al.,

Defendants.

ORDER

Presently before the court are the report and recommendations of United States Magistrate Judge Lawrence R. Leavitt. (Doc. # 2).

Upon reviewing plaintiff Edward W. Fisher, Jr.'s motion/application to proceed in forma pauperis (doc. #1), Judge Leavitt recommended that the motion (doc. #1) and complaint (doc. #1-1) be dismissed without prejudice.

Judge Leavitt recommends that this court dismiss the case pursuant to Federal Rule of Civil Procedure 12(h)(3), because it lacks subject matter jurisdiction over the plaintiff's claims. As stated in the recommendation (doc. #2), plaintiff's application (doc. #1) and complaint (doc. #1-1), which were filed in federal court, allege that he was injured while doing culinary work as an inmate at the Las Vegas Detention Center. Plaintiff asserts claims for relief for (1) negligence in instructing him on how to use sodium hydroxide in violation of NRS 41.130, (2) negligence in failing to provide him protective eye gear in violation of NRS 41.130, and (3) for a violation of the Occupational Safety and Health Act (hereinafter "OSHA"). (Doc. #1-1).

27 Since the plaintiff's first two claims are dealing with a state statute, NRS 41.130, and not a

1 federal question, and since there is no indication that the parties are citizens of different states or that
2 the amount in controversy is over \$75,000, Judge Leavitt held that this court lacks jurisdiction to
3 hear the claims. 28 U.S.C § 1331; 28 U.S.C. 1332. With regards to the third claim, Judge Leavitt
4 properly concluded that the claim must be dismissed, because OSHA does not provide for a private
5 right of action. *See Merritt v. Bethlehem Steel Corp.*, 875 F.3d 603, 608 (1989) (“[plaintiff] seeks
6 to create a private right of action where none exists.”) (citing *Jeter v. St. Regis Paper Co.*, 507 F.2d
7 973, 976-77 (5th Cir. 1975); *Russell v. Bartley*, 494 F.2d 334, 335-6 (6th Cir. 1974). .

8 Pursuant to Local Rule IB 3-2, the parties may file specific written objections to this report
9 and recommendation within fourteen days of receipt. Objections to the report and recommendation
10 were due on April 17, 2011. To date, no objections have been filed.

11 Upon review of the magistrate judge’s findings and recommendations (Doc. #2) and there
12 not being any objections,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that United States Magistrate
14 Judge Lawrence R. Leavitt’s report and recommendations (Doc. #2) be, and the same hereby are,
15 AFFIRMED in their entirety.

16 IT IS THEREFORE ORDERED that the plaintiff’s motion/application for leave to proceed
17 in forma pauperis (doc. #1) and complaint (doc. #1-1) be, and the same hereby are, DISMISSED
18 without prejudice.

19 DATED May 17, 2011.

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UNITED STATES DISTRICT JUDGE
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